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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,917	10/30/2003	Anthony R. Tuel	RSW920030189US1	9643

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EXAMINER
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WU, QING YUAN

ART UNIT	PAPER NUMBER
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2194

NOTIFICATION DATE	DELIVERY MODE
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04/22/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hwdpatents.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/697,917	<b>Applicant(s)</b> TUEL, ANTHONY R.	
	<b>Examiner</b> Qing-Yuan Wu	<b>Art Unit</b> 2194	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-6,9,10,12-15 and 17-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,9,10,12-15 and 17-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. Claims 1, 3-6, 9-10, 12-15 and 17-25 are pending in the application.
2. Prosecution on the merits of this application is reopened after further considering applicant's argument of replying to a requester before a resource is committed or failed to commit to "decrease the amount of time a requester must wait for a reply" [last line of page 8 through first line of page 9 in the remark filed on 11/8/07 and page 3, lines 2-4 in the remark filed 12/10/07] and rejecting claims 18-20 and 25 under 35 U.S.C. 101.

### *Claim Rejections - 35 USC § 101*

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
4. Claims 13-15, 17-20 and 25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
5. Claim 13 is a computer system claim however the body of the claim "a reception system, a preparation system,... and a commitment system" is directed to **software per se** without claiming associated computer hardware required for execution. Claims 14-15 and 17 are dependent claims of claim 13 and do not support the hardware requirement for implementing the system of claim 13, therefore they are rejected for the same reason.
6. Claim 18 fails to fall within a statutory category of invention, the claimed recordable medium is defined as a "**transmission media**" [specification, pg. 6, paragraph 20] which falls

outside of all of the statutory categories. More specifically, instructions/data embodied in transmission media such as waves, signals, wired or wireless media are transient in nature and cannot be manufactured. Hence, instructions/data stored on such transmission media, are not statutory. The Examiner suggests rephrasing the specification and clearly distinguishes the storage media (statutory subject matter) and transmission or non-recordable media, subsequently claiming only the statutory subject matter to overcome the rejection. Claims 19-20 and 25 are rejected for the same reason. See MPEP 2163.07 and 2106 (IV)(B).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3-6, 9-10, 12-15 and 17-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Somogyi et al (hereafter Somogyi) (U.S. Publication 2004/0215594), in view of Flores et al. (hereafter Flores) (U.S. Patent 5,208,748).

9. As to claim 1, Somogyi teaches a method of processing a transaction that requires a plurality of resources, the method comprising:

requesting preparation of a first resource required by the transaction;

requesting preparation of a second resource required by the transaction before receiving a preparation response from the first resource [Fig. 4; paragraphs 22 and 25];

receiving the preparation response for the first and second resources [paragraph 23, lines 13-16; 570, Fig. 5];

reporting results based on the preparation responses [paragraphs 24, 27, 39 claim 5, 580, Fig. 5]; and

requesting, after the reporting of results, one of: a commitment or a roll back of each resource based on the preparation responses [paragraph 8, lines 15-29; paragraphs 23-24; Figs. 4-5].

10. Somogyi does not specifically teach replying to a requester before commitment or failure of commitment of the requested resources. However, Somogyi disclosed informing resource participants of the outcome of resources preparation request [paragraph 8, line 15-18] and reporting results of XA operation [paragraphs 24, 27, 39 claim 5, 580, Fig. 5]. In addition, Flores teaches providing a promise response to the requester for a preparation prior to fulfilling the request [Flores, col. 25, line 37-col. 26, line 40; col. 32, lines 24-32].

11. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to have modified the teaching of Somogyi with the teaching of Flores because the teaching of Flores can further enhances the teaching of Somogyi by providing an early acknowledgement to a requester prior to the fulfillment or failure of fulfillment of the request thereby shortening the time a requester required to wait for a reply.

12. As to claim 3, Somogyi as modified teaches logging a preparation result for the transaction based on the preparation responses [paragraphs 24 and 27; pgs. 4-5, claims 5 and 10].

13. As to claim 4, Somogyi as modified teaches receiving a transaction request from the requester [paragraph 6].

14. As to claim 5, this claim is rejected for the same reason as claim 1 above.

15. As to claim 6, this claim is rejected for the same reason as claim 1 above.

16. As to claim 9, this claim is rejected for the same reason as claim 1 above. In addition, Somogyi as modified teaches a method of processing a transaction, the method comprising: concurrently preparing a plurality of resources for the transaction, the preparing including performing a set of operations on each of the plurality of resources based on the transaction [paragraphs 8 and 11 ]; waiting for a preparation response for each of the plurality of resources; and concurrently committing the plurality of resources to make the operations of the transaction permanent [Fig. 4; paragraphs 8, 22 and 25].

17. As to claim 10, this claim is rejected for the same reason as claim 4 above.

18. As to claim 12, this claim is rejected for the same reason as claim 3 above.

19. As to claim 13, this is rejected for the same reason as claims 1 and 9 above. In addition, Somogyi as modified teaches a reception system for receiving a transaction request from a requester [paragraph 6].

20. As to claim 14, this claim is rejected for the same reason as claim 3 above.

21. As to claim 15, this is rejected for the same reason as claim 9 above.

22. As to claim 17, this claim is rejected for the same reason as claim 13 above. In addition, Somogyi as modified do not specifically teach creating a plurality of resource threads. However, Somogyi disclosed dispatching interaction commands to idle server threads in a thread pool and situation when all server threads are being utilized (no idle thread) [paragraphs 20-21, 24, 31]. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to be motivated to enhance Somogyi as modified's transaction processing method by creating threads in a thread pool for preparing resources if all the server threads are utilized (lack of availability of server threads/idle server threads) given the advantages of executing XA operations in parallel as being considered by Somogyi [paragraph 11].

23. As to claim 18, this is rejected for the same reason as claims 1 and 9 above. In addition, Somogyi as modified teaches simultaneously waiting for a preparation response for each of the plurality of resources based on preparation response [paragraph 23, lines 13-16; 570, Fig. 5]; requesting at least one of: commitment or roll back of the plurality of resources based on at least one preparation response [paragraphs 8, 21, 24 and 28].

24. As to claim 19, this is rejected for the same reason as claim 4 above.

25. As to claim 20, this is rejected for the same reason as claim 3 above.
26. As to claim 21, Somogyi as modified do not specifically teach a non-blocking function call. However, Somogyi disclosed preparing each resource in parallel without having to wait on the result from a previous resource [paragraphs 22-23]. It would have been obvious to one of an ordinary skill in the art at the time the invention was made, to recognize that Somogyi's requests for parallel execution is functionally equivalent in achieving the result of a non-blocking function call.
27. As to claim 22, this is rejected for the same reason as claim 17 above.
28. As to claim 23, this is rejected for the same reason as claim 5 above.
29. As to claim 24, this is rejected for the same reason as claim 21 above.
30. As to claim 25, this is rejected for the same reason as claim 5 above.
31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,781,910 to Gostanian et al., U.S. Patent No. 6,105,147 to Molloy

U.S. PG Publication No. 2004/0210590 and WO2004068294A2 to Somogyi.



*Response to Arguments*

32. Applicant's arguments filed 12/10/07 have been fully considered but they are not persuasive.
33. In the remarks, Applicant argued in substance that:
- a. 35 USC § 101 rejection of claims 13-15 and 17 should be withdrawn because a computer system as recited inherently includes computer hardware.
  - b. Combination of Somogyi and AAPA failed to teach after replying to a requester based on preparation responses, requesting one of : a commitment or a roll back of each resource.
  - c. Neither Somogyi nor AAPA teaches or suggests program code for starting a resource thread for a resource because utilizing available threads is different than starting a thread.
34. Examiner respectfully traversed Applicant's remarks:
35. As to point (a), as stated in the advisory action dated 12/4/07 and reinstated herein the examiner respectfully disagrees and submits that the body of the claim failed to support the hardware requirement for the preamble of a "computer system". More specifically, the applicant is claiming a hardware/"computer system", however the body of the claim recites software and software functionalities (i.e. modules, mechanism) alone, each of the systems recited in the claim (i.e. reception, preparation, reply, commitment) are nonetheless software modules [specification, 30-38 Fig. 1]. Although, the specification recites the software modules as being stored in a

memory that constitute a part of the computer system, claim 13 failed to claim the memory that stored the program module nor a CPU to execute the software modules in the memory.

Applicant is reminded that claimed subject matter, not the specification, is the measure of invention.

36. As to point (b), this argument is moot in view of the new ground of rejection.

37. As to point (c), examiner respectfully disagrees and submits that Somogyi's teaching of utilizing (i.e. by starting/initiating/assigning) an available thread for handling the resource transaction operation clearly satisfied this limitation [paragraphs 20-21]. Applicant failed to explain why utilizing a thread by means of initiating the thread that is otherwise idled doesn't satisfy "starting a thread," in addition, applicant's specification failed to defined what "starting" is, therefore applicant's argument is not persuasive.

38. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qing-Yuan Wu whose telephone number is (571)272-3776. The examiner can normally be reached on 8:30am-6:00pm Monday-Thursday and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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/Qing-Yuan Wu/

Examiner, Art Unit 2194

/Meng-Ai An/

Supervisory Patent Examiner, Art Unit 2195